

District Judge James L. Robart

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SEA SHEPHERD LEGAL,

Plaintiff,

v.

NATIONAL OCEANIC AND  
ATMOSPHERIC ADMINISTRATION, *et*  
*al.*,

Defendants.

Case No. C19-463 JLR

STIPULATED MOTION AND  
~~PROPOSED~~ ORDER FOR RELIEF  
FROM 26(F) CONFERENCE,  
INITIAL DISCLOSURES, AND  
JOINT STATUS REPORT

Noted for Consideration:  
May 28, 2019



Plaintiff SEA SHEPHERD LEGAL filed the above-captioned lawsuit under the Freedom of Information Act ("FOIA") against Defendants NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION ("NOAA") and NATIONAL MARINE FISHERIES SERVICES ("NMFS"), seeking disclosure of certain documents.

For the reasons stated below, the parties respectfully request that the Court vacate the Rule 26 deadlines, and instead allow the parties to submit a joint status report within the next 60 days.

The ultimate issue in a FOIA action is whether the agency in question has "improperly" withheld agency records. 5 U.S.C. § 552(a)(4)(B); *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136, 150 (1980). This is typically a question

of law for the Court, rather than a question of fact, and thus, “[s]ummary judgment is the procedural vehicle by which nearly all FOIA cases are resolved.” *Shannahan v. I.R.S.*, 637 F. Supp. 2d 902, 912 (W.D. Wash. 2009) (quoting *Los Angeles Times Commc'ns, LLC v. Dep't of Army*, 442 F. Supp. 2d 880, 893 (C.D. Cal. 2006)). The parties agree that the initial disclosure requirements of Rule 26(a)(1) and the requirements of Rule 26(f), requiring the parties to prepare a discovery plan, are not appropriate in this case at this time, as the litigation is unlikely to lead to trial, and very possibly not discovery. That being said, the Plaintiff reserves the right to request discovery should evidence of bad faith or other grounds for discovery emerge.

Thus far, the parties have worked cooperatively in an attempt to resolve this litigation without motion practice. Defendants intend to produce the requested documents imminently with a final determination letter. As further discussion is expected after the production, counsel for the parties intend to continue to work together on any issues. If at any time in the next 60 days it becomes apparent that resolution between the parties is not feasible, the parties will submit a joint briefing schedule to the Court.

**SO STIPULATED.**

Dated this 28th day of May 2019.

s/ Brett W. Sommermeyer  
BRETT W. SOMMERMEYER, WSBA # 30003

s/ Catherine E. Pruett  
CATHERINE E. PRUETT, WA BAR # 35140

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Attorneys for Plaintiff

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2 **SO STIPULATED.**

3 Dated this 28th day of February 2019.

4  
5 s/ Michelle R. Lambert  
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13  
14 Attorney for Defendants

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16  
17 **ORDER**

18 **IT IS SO ORDERED.**

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20 Dated this <sup>24</sup>~~28~~ day of May 2019.

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23 JAMES L. ROBART  
24 United States District Judge  
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